

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

Petitioner, a state prisoner proceeding pro se, has requested appointment of counsel to pursue his petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2254. [Doc. No. 3] The request for appointment of counsel is denied.

The Sixth Amendment right to counsel does not extend to federal habeas corpus actions by state prisoners. McCleskey v. Zant, 499 U.S. 467, 495 (1991); Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir. 1986); Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986). However, financially eligible habeas petitioners seeking relief pursuant to 28 U.S.C. § 2254 may obtain representation whenever the court “determines that the interests of justice so require.”” 18 U.S.C. § 3006A(a)(2)(B) (West Supp. 2005); Terrovona v. Kincheloe, 912 F.2d 1176, 1181 (9th Cir. 1990); Bashor v. Risley, 730 F.2d 1228, 1234 (9th Cir. 1984); Hoggard v. Purkett, 29 F.3d 469, 471 (8th Cir. 1994).

1       The interests of justice require appointment of counsel when the court conducts an  
 2 evidentiary hearing on the petition. Terrovona, 912 F.2d at 1177; Knaubert, 791 F.2d at 728;  
 3 Abdullah v. Norris, 18 F.3d 571, 573 (8th Cir. 1994); Rule 8(c), 28 U.S.C. foll. § 2254. The  
 4 appointment of counsel is discretionary when no evidentiary hearing is necessary. Terrovona,  
 5 912 F.2d at 1177; Knaubert, 791 F.2d at 728; Abdullah, 18 F.3d at 573.

6       In the Ninth Circuit, “[i]ndigent state prisoners applying for habeas relief are not entitled  
 7 to appointed counsel unless the circumstances of a particular case indicate that appointed  
 8 counsel is necessary to prevent due process violations.” Chaney, 801 F.2d at 1196; Knaubert,  
 9 791 F.2d at 728-29. A due process violation may occur in the absence of counsel if the issues  
 10 involved are too complex for the petitioner. In addition, the appointment of counsel may be  
 11 necessary if the petitioner has such limited education that he or she is incapable of presenting his  
 12 or her claims. Hawkins v. Bennett, 423 F.2d 948, 950 (8th Cir. 1970).

13       In the Eighth Circuit, “[t]o determine whether appointment of counsel is required for  
 14 habeas petitioners with nonfrivolous claims, a district court should consider the legal complexity  
 15 of the case, the factual complexity of the case, the petitioner’s ability to investigate and present  
 16 his claim, and any other relevant factors.” Abdullah v. Norris, 18 F.3d at 573 (citing Battle v.  
 17 Armontrout, 902 F.2d 701, 702 (8th Cir. 1990)); Hoggard, 29 F.3d at 471; Boyd v. Groose, 4  
 18 F.3d 669, 671 (8th Cir. 1993); Smith v. Groose, 998 F.2d 1439, 1442 (8th Cir. 1993); Johnson v.  
 19 Williams, 788 F.2d 1319, 1322-23 (8th Cir. 1986).

20       Because these factors are useful in determining whether due process requires the  
 21 appointment of counsel, they are considered to the extent possible based on the record before the  
 22 Court. Here, Petitioner has sufficiently represented himself to date by filing a comprehensive  
 23 Petition. [Doc. No. 1.] From the face of the petition, filed pro se, it appears that Petitioner has a  
 24 good grasp of this case and the legal issues involved. Under such circumstances, a district court  
 25 does not abuse its discretion in denying a state prisoner’s request for appointment of counsel as it  
 26 is simply not warranted by the interests of justice. See LaMere v. Risley, 827 F.2d 622, 626 (9th  
 27 Cir. 1987). At this early stage of the proceedings, the Court finds that the interests of justice do  
 28 not require the appointment of counsel.

For the above-stated reasons, the “interests of justice” in this matter do not compel the appointment of counsel at this time. Accordingly, Petitioner’s request for appointment of counsel is **DENIED** without prejudice.

## **IT IS SO ORDERED.**

DATED: March 29, 2007

W. McCutcheon Jr.

Hon. William McCurine, Jr.  
U.S. Magistrate Judge  
United States District Court

**Copy to:**

HONORABLE LARRY A. BURNS, U.S. DISTRICT JUDGE  
ALL COUNSEL OF RECORD  
PRISONER *PRO SE*